IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 7955 of 2007(V)

PETITIONERS:

1. **S.UNNIKRISHNAN, LEADING FIREMAN NO.3150, FIRE FORCE STATION, PUNALUR.**
2. **K.ROBERT, LEADING FIREMAN NO.3158, FIRE STATION, PUNALUR.**

BY ADV. SRI. S.A.RAZZAK

RESPONDENTS:

1. **THE DIRECTOR, FIRE & RESCUE SERVICES HEADQUARTERS, HOUSING BOARD JUNCTION, THIRUVANANTHAPURAM.**
2. **THE COMMANDANT GENERAL, FIRE & RESCUE SERVICES HEADQUARTERS, HOUSING BOARD JUNCTION, THIRUVANANTHAPURAM.**
3. **S.SHAJI, LF NO.3183, FIRE FORCE STATION, KARUNAGAPALLY.**

BY GOVERNMENT PLEADER SMT.K.L.LAKSHMI RANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.7955/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE G.O.(MS) NO.173/HOME (D) DT.15TH MAY, 1965.

EXT.P2:- COPY OF THE 1ST RESPONDENT'S STANDING ORDER NO.21/65 DT. 16.6.65.

EXT.P3:- COPY OF THE 1ST RESPONDENT ISSUED STANDING ORDER NO.14/98 DT. 1.12.98.

EXT.P4:- COPY OF THE SERVICE ORDER NO.79/06 DT. 8.6.06 WITH ANNEXURES . I TO V THERETO.

EXT.P5:- COPY OF THE 1ST PETITIONER'S MEMORANDUM OF APPEAL DT. 31.7.06.

EXT.P6:- COPY OF THE 2ND PETITIONER'S MEMORANDUM OF APPEAL DT. 31.7.06.

EXT.P7:- COPY OF THE JUDGMENT IN WP(C) NO.27296/2006 DT. 17.10.06.

EXT.P8:- COPY OF THE POSTAL ACKNOWLEDGMENT DT. 22.11.06.

EXT.P9:- COPY OF THE SERVICE ORDER NO.36/07 DT. 27.2.07 ISSUED BY THE 2ND RESPONDENT.

EXT.P10:- COPY OF THE ORDER NO.A2-11644/2006 DT. 7.3.07 ISSUED BY R2.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE REPLY IN EXT.P4 & P5 REPRESENTATION.

EXT.R1(b):- COPY OF THE REPLY DT. 12.3.07.

EXT.R1(c):- COPY OF THE STANDING ORDER NO.25/64.

ANNEXURE A:- COPY OF THE ORDER NO.A2-11644/06 DT. 7.3.07 ISSUED BY R2.

/TRUE COPY/

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K.BALAKRISHNAN NAIR,J.

WP(C)NO.7955 OF 2007-V

Judgment

The petitioners are Leading Firemen, claiming promotion to the post of Sub Officer, which is now re-designated as Assistant Station Officer. It is common case that they cleared the necessary written test and also the practical test. But, since they failed to get 50% marks for the practical test, they were not selected. The petitioners appealed and as per the direction of this Court, the said appeal was considered and rejected by Ext.P10 order dated 7.3.2007. The petitioners challenge Ext.P10 as also Ext.P9 list of persons, in which, they are included in Annexure V as persons, who have cleared only the written test. They rely on Ext.P1, which is an order, containing the guidelines for giving training to a Leading Fireman. All Leading Firemen and other equated categories are eligible to get promotion as ASO. As per Sub-clause (8) of Clause 4 of Ext.P1 Instructions, for physical training as well as for the theory test, 40% is necessary for securing a pass. The said sub-clause deals with preliminary tests. Sub-clause (9) deals with final tests. But, this sub-clause does not say, what should be the required marks for clearing the tests. They have got 40% marks for physical tests. According to the petitioners, since there is no prescription of any minimum marks for a pass, it cannot, at any rate, go beyond 40%. So, they should be treated as having cleared the test and should be included in the list of Leading Firemen, eligible for promotion as ASO, it is submitted. Hence this Writ Petition,

seeking appropriate reliefs.

2. The first respondent has filed a counter affidavit, in which it is submitted that there is no prescription of any percentage of marks for clearing the test. But, they rely on Ext.R1(c) standing order No.25/64, which deals with written test and practical test for Fireman recruits. As per the said circular, the minimum marks required for successful completion of the training is 40% for the written test and 50% for the practical test. The said respondent submits that the said circular is followed by the Department. The petitioners would point out that the said circular is concerning the training of Fireman recruits, whereas Ext.P1 contains the instructions to prepare the select list of eligible Leading Firemen for promotion as ASO.

3. I heard the learned counsel on both sides. I think, there is considerable force in the submission of the petitioners. Of course, the competent authority can prescribe the marks for clearing a test. In the absence of any prescription for any particular test, at the time of preparing the list of persons eligible, it cannot be insisted that they should get at least 50%, relying on Ext.R2(c) circular, which has no application to the present selection.

4. Going by Sub-clauses (8) and (9) of Clause 4 of Ext.P1, candidates of reasonable intelligence will definitely think that they can clear the practical test, if they get 40% marks. Therefore, it is not fair or proper to say that they have failed the test for not having obtained 50% marks. It is an admitted position as evident from the pleadings in the counter affidavit that there is no Rule or Order, prescribing 50% marks as the minimum

marks for clearing the physical test, which is held as part of the final test. Accordingly, Ext.P10 is set aside. The 1st respondent is directed to recast Ext.P9, giving the petitioners, appropriate place in the light of the observations made herein above, within two months from the date of receipt of a copy of this Judgment, provided, the petitioners have got at least 40% marks for the physical/practical test. Needless to say, they shall be given further promotions also, according to their turn.

07.06.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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